

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

DAVID SIDOO, *et al.*,

Defendants.

Crim. No. 19-cr-10080-NMG-MPK

JOINT INITIAL STATUS REPORT

Pursuant to Local Rule 116.5(a), the parties hereby file the following status report prepared in connection with the Initial Status Conference that is currently scheduled for June 3, 2019. Defendants believe an in-person status conference on June 3 is necessary to address certain discovery-related issues, including the Government's policy regarding FBI reports. Defendants suggest that out-of-state counsel be allowed to attend that hearing telephonically if they so choose.

(1) Automatic Discovery & Pending Discovery Requests

The Government mailed automatic discovery in this case to Sidoo on or about April 25, 2019, the Colburn defendants on or about April 30, 2019, and the remaining defendants on or about May 17, 2019. This discovery was provided on a hard drive as well as an accompanying DVD. The Government provided Defendants with indexes where required and multiple databases in load-ready forms. Defendants are currently reviewing this discovery. The Defendants have requested that the Government provide more comprehensive indices as required by Local Rule 116.10 and the parties are conferring regarding this request.

(2) Additional Discovery

The Government anticipates providing significant additional discovery as it comes in and is processed by the Government. This includes a third production that will primarily – but not exclusively – consist of records that will be provided to all Defendants on or about May 30, 2019.

After this, the Government anticipates producing discovery on a rolling basis approximately once each month. The Government is reviewing discovery as it is produced to determine whether any such discovery, with respect to the charged defendants, is information that would tend directly to negate the defendant's guilt concerning any count in the indictment, and will produce said discovery. Defendants request that the Government be required to certify, by a date to be set by the Court, that it has reviewed all potential sources of material required to be produced under Fed. R. Crim. P. 16, Local Rule 116.2(b)(1) and *Brady vs. Maryland* and has provided Defendants with all such material. The Government objects to this request, noting that in complex case such as this, where new evidence is constantly being generated, such a "certification" is unworkable. Further, the government is aware of its obligations and will produce discovery – including *Brady* – as it is reviewed and processed by counsel.

(3) Timing of Additional Discovery Requests

In light of the large volume of discovery produced by the Government to date and additional materials that are forthcoming, the parties agree to hold in abeyance the deadlines associated with the discovery motion and bill of particulars provisions of Local Rule 116.3 until at least the next status conference, at which time the parties will endeavor to propose deadlines for discovery motions or request more time.

The parties agree that in the interim, any Defendant may confer and exchange letter requests with the Government for additional discovery pursuant to the non-deadline provisions of

Local Rule 116.3 (e.g., Local Rule 116.3(h) re consolidation of written requests and motions in multi-defendant cases). Defendants also request the ability to file requests for bills of particulars if they so choose before the schedule the parties will endeavor to set at the next status conference in October. The Government opposes this request.

(4) Protective Orders

There is a protective order currently in place. Should a party seek a protective order or modification of any existing protective order, a motion will be filed with the Court to address any issue.

(5) Pretrial Motions

The parties request that the Court set a schedule for defendants to file pretrial motions under Fed. R. Crim. P. 12(b) after Defendants have had an opportunity to review all discovery provided by the Government. The parties will endeavor to provide a proposed briefing schedule to the Court ahead of the next status conference.

With respect to the motion to dismiss filed by defendants Amy and Gregory Colburn (ECF # 341), all parties agree and request that resolution of the motion be stayed until the other defendants have had an opportunity to review the discovery materials from the Government in order to determine whether to join the motion filed by the Colburn defendants or to file their own separate or consolidated motions. The Government also requests that its response deadline be continued until after all Defendants have filed any additional motions to dismiss.

(6) Expert Discovery

The Government agrees to provide any expert witness disclosures 90 days prior to trial. The Defendants agree to provide any expert witness disclosures 30 days prior to trial.

Defendants also request that the Government agree to disclose, 6 months before trial, the names and general subject-matters of its experts. Further, defendants believe that the final expert disclosures should be similar in scope to those required in civil actions. The Government opposes this request, believing that there is no need to deviate from the standard time frames here with respect to expert discovery.

(7) Speedy Trial Act

The parties have conferred and ask that the Court exclude the period of time from the time of the initial status conference on June 3, 2019 to the time of the next status conference, under 18 U.S.C. § 3161(h)(7)(A), to permit the Defendants time to review discovery and confer with their respective counsel. The ends of justice served by this exclusion outweigh the interests of the public and the defendant in a speedy trial.

(8) Interim Status Conference

The parties request an interim status conference on or about October 2, 2019, or at a time thereafter that is convenient to the Court.

(9) Pretrial Restriction on Contact with Witnesses

The Court has imposed a condition of release prohibiting contact between the Defendants and potential witnesses (except in counsel's presence). Defendants believe that this restriction remains vague and impracticable because, to date, the Government has not identified the persons to whom it believes this restriction should apply. The parties agree that the Government will provide a list of potential witnesses to defense counsel by June 30, 2019, with the list being supplemented on a rolling basis thereafter if the Government identifies additional witnesses or co-conspirators. If any of the Defendants should challenge the inclusion of any particular

individual on the list, Defendants shall file a motion (under seal if appropriate) explaining why such contact is necessary.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Eóin P. Beirne, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 29, 2019.

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